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**APR 12 2006**

**OFFICE OF PETITIONS**

In re Application of	:	
Lee et al.	:	DECISION ON APPLICATION
Application No. 09/967,223	:	FOR
Filed: September 28, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. JB01337K	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed January 5, 2006. Petitioners request correction of the patent term adjustment from zero (0) days to add at least one hundred thirty seven (137) days solely on the basis of the Office taking in excess of three years to issue the patent.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date<sup>1</sup>. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Petitioners are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Petitioners may seek such consideration without payment of an additional fee. However, as to all other bases

<sup>1</sup> Citing each adjustment and reduction of record, petitioners otherwise agree with the determination of patent term adjustment of 0 days indicated in the Notice of Allowance.

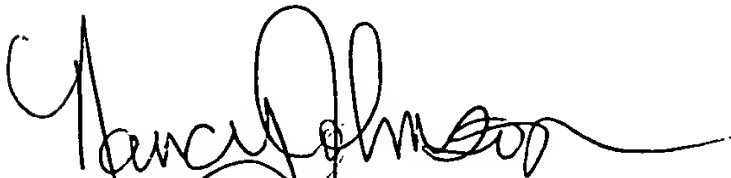
for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioners are reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

This matter is being referred to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Nancy Johnson  
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Office of Petitions